

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ORDER

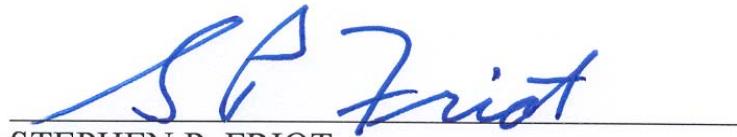
Defendant's motion to dismiss plaintiff's breach of contract claim under Rule 12(b)(6), Fed. R. Civ. P., is before the court. (Doc. no. 9.)

Although plaintiff previously sought and received an extension of time within which to respond to the motion, that time has expired and no response has been filed. Accordingly, the motion is potentially subject to being deemed confessed. *See*, LCvR7.2(g) (motion not responded to may, in the court's discretion, be deemed confessed). Preferring to base any ruling on the merits of the motion as well, however, the court has reviewed the motion. In doing so, the court notes that the motion relies on matters outside the pleadings. The court does not plan to exclude that material from its consideration.

Accordingly, as required by Rule 12(b)(6), the court hereby gives notice to all parties of its intent to treat the motion as one for summary judgment, to be disposed of under Rule 56, Fed. R. Civ. P. Any party wishing to present any additional material (including argument or evidence) made pertinent as a result of the conversion of the

motion may file a short, supplemental brief for that purpose on or before October 25, 2007.

Dated this 22nd day of October, 2007.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

07-0951p003(pub).wpd